

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

LUIS ORTIZ-FIGUEROA,

Petitioner,

v.

Case No: 5:21-cv-345-TPB-PRL

WARDEN, FCC COLEMAN –
LOW,

Respondent.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Petitioner, a federal inmate incarcerated at the Coleman Federal Correctional Complex, initiated this civil action by filing a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 1). Although his Petition is not a picture of clarity, it appears that Petitioner is challenging a federal conviction and sentence obtained in the District of Puerto Rico (*id.* at 4). He argues that his conviction and sentence for the offense of “aiding and abetting [a] firearm” should be vacated because the Supreme Court recently held unconstitutional 18 U.S.C. § 924(c)(3)(B), under which Petitioner contends his sentence was enhanced for having committed a “crime of violence.” *Id.* at 5-7 (citing *United States v. Davis*, 139 S. Ct. 2319 (2019)).

Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that “[i]f

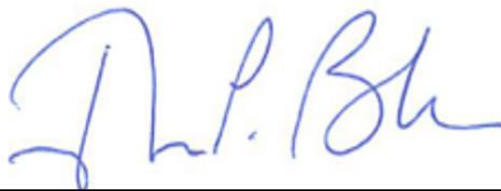
the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.” *See also* Rule 12, Rules Governing Section 2255 proceedings. The Eleventh Circuit has held that 28 U.S.C. § 2241 is not available to challenge the validity of a sentence except on very narrow grounds. *McCarthan v. Director of Goodwill Industries-Suncoast, Inc.*, 851 F.3d 1076, 1079 (11th Cir. 2017); *Bernard v. FCC Coleman Warden*, 686 F. App’x 730 (11th Cir. 2017) (citing *McCarthan*, 851 F.3d at 1092-93). None of those grounds are present in this case, and thus Petitioner is not entitled to proceed under § 2241. As such, this case is due to be dismissed.

Accordingly, it is

ORDERED and ADJUDGED:

This case is **DISMISSED without prejudice**. The **Clerk** shall enter judgment accordingly, terminate any pending motions, and close this case.

DONE AND ORDERED at Tampa, Florida, this 11th day of August, 2021.



TOM BARBER
UNITED STATES DISTRICT JUDGE

Jax-7

C: Luis Ortiz-Figueroa, #52956-069